would seem that the court has no alternative but to give the requested opinion. The recent refusal, therefore, by the Supreme Court of South Dakota (66 N. W. Rep. 310) to give an opinion as required by the Constitution is at first rather startling, though not entirely unprecedented. Once before the South Dakota court has declined to give an extra-judicial opinion (54 N. W. Rep. 650), and there is a record of a similar refusal by the Colorado court (12 Col. 466). The first refusal by the Massachusetts court seems to have been in 1787. A memorial to the General Court by the French Consul at Boston, dated June 1, 1787, says, "the Legislature referred the Consideration thereof to the Supreme Court for their Opinion, who for Substantial Reasons declined giving an Extra-judicial Opinion." The Massachusetts Reports contain the records of three more refusals. (See *Answers of the Justices*, 122 Mass. 600; 148 Mass. 623; 150 Mass. 598.) In most of these instances the courts have declined to construe an existing statute, and such refusals have been rested on the ground that the question was likely to come before them for actual adjudication. It is submitted that the same reasons would apply for refusing to render an opinion on the constitutionality of pending legislation, but such opinions have invariably been given. The courts find justification for their refusals in the general language of the Constitutions, and while admitting the right of the other departments to call for opinions, assert the province of the judiciary to decide whether the occasion is one intended to be covered by the Constitution. (See 150 Mass. 598.)

It is submitted that an additional provision to the effect that advisory opinions be considered as personal rather than official, and thus kept from going on the records, would relieve the system of most of its objectionable features, and retain substantially all of its benefits.

NATURE OF THE RIGHTS IN A DEAD BODY. — In the case of *Bogert* v. *City of Indianapolis*, 13 Ind. 134, there is a curious *dictum* to the effect that the bodies of the dead belong, as property, to the surviving relatives in the order of inheritance, and that they have the right to dispose of them as such. Nowhere else has the law relating to dead bodies assumed quite so commercial a character. To regard a corpse as a piece of property shocks the sensibilities of the average man. The common law did not regard it as such, nor is it generally so regarded to-day. Yet that the surviving relatives, before burial of the body, have a right of some sort which the law will protect, is undeniable.

The novel question of a wife's right to recover damages for the unlawful dissection of her husband's body before burial arose, for the first time, in *Larson* v. *Chase*, 47 Minn. 307, commented on in 5 HARVARD LAW REVIEW, 285. The same question recently came before the Supreme Court of New York in *Foley* v. *Phelps*, 37 N. Y. Supp. 471. In both cases it was very justly held that the wife could recover. The only difficulty arises in determining the nature of the right that has been infringed. In *Pierce* v. *Proprietors of Swan Point Cemetery*, 10 R. I. 227, it was denominated a quasi-property right. This, of course, does not solve the difficulty. In *Foley* v. *Phelps*, *supra*, a more exact definition was attempted. The court, following substantially the doctrine of *Larson* v. *Chase*, *supra*, declared that a surviving wife is entitled to the possession of the body of her deceased husband, in the same condition as when

death occurred, for the purposes of giving it proper care and burial. This right of undisturbed possession which vests in the husband or wife or next of kin of the deceased is clearly one that the law can protect, and the decision of the New York court in sustaining an action for its violation seems entirely sound. Even if so clearly defined a legal right did not exist, the courts would probably have no trouble in supporting an action of this sort on some broader ground. It is one of those instances where failure of justice would involve such a shock to every feeling of decency and propriety that the law positively must disclose a principle to cover it. The development in recent times of such rights as the right to privacy shows that the common law is ever ready to expand in response to demands of that nature.

ADEMPTION OF GENERAL LEGACIES. — That a gift by a testator during his lifetime will often be regarded in law as a satisfaction of a legacy of money under a previously executed will, is clear. But the circumstances under which this so-called ademption of the legacy takes place have not always been sharply defined, and the various rules laid down by judges in attempting to define them led to much confusion in the early cases. It is consequently agreeable to find the subject so clearly and satisfactorily treated as it is by the Michigan court in the recent case of *Carmichael* v. *Lathrop*, 66 N. W. Rep. 350. The point decided, namely, that a general bequest to one of the testator's children of a share in the residue of his personal estate would be satisfied *pro tanto* by a conveyance of real estate during the life of the testator, is well settled in courts of equity. The importance of the case lies in the fact that it is illustrative of nearly all the leading phases of the doctrine of ademption.

The first and most important rule on the subject is, that, while ordinarily a gift will not adeem a legacy without clear proof of the testator's intention, nevertheless, where the testator is the father of the legatee, or stands *in loco parentis* to him, the gift will be presumed to be in satisfaction of the legacy, in whole or in part, unless a contrary intention appears. Originating in the dislike courts felt for double portions, and their eagerness to presume that a father intended to deal with all his children alike, the rule has been extended so that it now operates universally, regardless of the inapplicability of the original reason. It has been criticised by eminent writers as unfair to legitimate children, who in this respect are in a worse position than illegitimate children or strangers. Story, Equity Jurisprudence, §§ 1110 *et seq.* But though it is often difficult to determine whether the testator stood *in loco parentis* to the legatee (see *Powys* v. *Mansfield*, 3 Myl. & C. 359), wherever that relation is found to have existed the presumption arises, unless the case falls within certain exceptions to the rule. *Carmichael* v. *Lathrop*, *supra*, illustrates one of the chief exceptions, namely, that where the legacy and the gift are not *ejusdem generis* the presumption will not arise. "Land is not to be taken in satisfaction for money, nor money for land." *Bellasis* v. *Uthwatt*, 1 Atk. 426. Difficult as it may be to find a reason for this exception, it is as well established as the rule itself. *Holmes* v. *Holmes*, 1 Bro. C. C. 555; *Evans* v. *Beaumont*, 4 Lea, 599. That the presumption did not arise in the case under discussion proved immaterial, however, as there was ample evidence of the testator's intention, which is always decisive.

In the early days the presumption would have failed in *Carmichael* v.